



# House of Representatives

## File No. 611

General Assembly

February Session, 2012

(Reprint of File No. 505)

Substitute House Bill No. 5395  
As Amended by House Amendment  
Schedules "A" and "B"

Approved by the Legislative Commissioner  
May 2, 2012

**AN ACT CONCERNING CUSTODY ORDERS FOR DEPLOYED  
MEMBERS OF THE ARMED FORCES AND CONFIDENTIAL  
COMMUNICATIONS MADE TO MEMBERS OF THE ARMED FORCES  
WHO ARE VICTIM ADVOCATES OR SEXUAL ASSAULT PREVENTION  
COORDINATORS.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2012*) (a) For the purposes of this  
2 section:

3 (1) "Armed forces" means the United States Army, Navy, Marine  
4 Corps, Coast Guard and Air Force and any reserve component thereof,  
5 including the Connecticut National Guard performing duty as  
6 provided in Title 32 of the United States Code;

7 (2) "Deploy" means military service in compliance with military  
8 orders received by a member of the armed forces to report for combat  
9 operations, contingency operations, peacekeeping operations, a remote  
10 tour of duty or other active duty, except state active duty.  
11 "Deployment" includes a period of time during which a member of the  
12 armed forces remains subject to deployment orders and remains

13     deployed on account of sickness, wounds or other lawful cause;

14         (3) "Deploying parent" means a parent who is a member of the  
15     armed forces and has been notified by military leadership that he or  
16     she will deploy or mobilize with the armed forces;

17         (4) "Mobilize" means the call-up of National Guard or Reserve  
18     service members to extended active duty. "Mobilization" does not  
19     include National Guard or Reserve annual training, inactive duty days,  
20     drill weekends, temporary duty or state active duty; and

21         (5) "Nondeploying parent" means a parent who has not been  
22     notified by military leadership that he or she will deploy or mobilize  
23     with the armed forces.

24         (b) If a deploying parent is required to be separated from a child of  
25     such parent during a deployment or mobilization, a court shall not  
26     enter a final order of custody or visitation modifying a final order of  
27     custody or visitation issued pursuant to section 46b-56, 46b-56a or 46b-  
28     61 of the general statutes until ninety days after such parent's  
29     deployment or mobilization ends, unless such modification is agreed  
30     to by the deploying parent.

31         (c) If a parent is a member of the armed forces, has sole or joint  
32     custody of a child or court ordered visitation, parental access or  
33     parenting time and receives notice from military leadership that he or  
34     she will deploy or mobilize in the near future and will be required to  
35     be separated from such child due to such deployment or mobilization,  
36     then upon motion of such deploying parent or the nondeploying  
37     parent, a court may enter temporary orders of custody or visitation  
38     modifying final orders of custody or visitation during the period of  
39     such deployment or mobilization if: (1) The deployment or  
40     mobilization would have a material effect upon the deploying parent's  
41     ability to exercise parental rights and responsibilities or parent-child  
42     contact as set forth in the existing final orders of custody or visitation,  
43     and (2) the court finds that such modification is in the best interests of  
44     the child. In issuing such temporary modification orders, the court

45 shall be guided by the provisions of the general statutes pertaining to  
46 custody and visitation. Motions for temporary modification of final  
47 orders of custody or visitation because of deployment or mobilization  
48 shall be given priority for this purpose.

49 (d) A temporary court order modifying final orders of custody or  
50 visitation issued under subsection (c) of this section shall require that:  
51 (1) Whenever the deploying parent is granted leave from such  
52 deployment or mobilization, the nondeploying parent shall make the  
53 child available to the deploying parent to the extent requested by the  
54 deploying parent, provided (A) such request for visitation time is not  
55 inconsistent with that provided for in the final orders of custody or  
56 visitation being modified by such temporary court order, and (B) the  
57 child shall not be absent from school unless ordered by the court or  
58 agreed to, in writing, by both parents; (2) the nondeploying parent  
59 facilitate opportunities for telephonic, electronic mail, and other such  
60 contact between the deploying parent and the child during  
61 deployment or mobilization; and (3) the deploying parent provide  
62 timely information regarding his or her leave schedule to the  
63 nondeploying parent. Changes in actual leave dates shall not be used  
64 by the nondeploying parent as a justification to limit contact between  
65 the deploying parent and the child.

66 (e) A temporary court order modifying final orders of custody or  
67 visitation issued under subsection (c) of this section shall specify that  
68 deployment or mobilization is the basis for the order and shall be  
69 entered by the court as a temporary order. The order shall further  
70 require the nondeploying parent to provide the court and the  
71 deploying parent with thirty days' advance written notice of any  
72 change of address and any change of telephone number, unless a court  
73 has ordered that the deploying party is not entitled to this information.

74 (f) If pendente lite orders of custody or visitation are in place or if  
75 there are no existing orders of custody or visitation establishing the  
76 terms of parental rights and responsibilities or parent-child contact  
77 and it appears that deployment or mobilization of a parent who is a

78 member of the armed forces is imminent, upon motion by either  
79 parent, the court shall expedite a hearing to establish temporary  
80 parental rights and responsibilities and parent-child contact to (1)  
81 ensure the deploying parent has access to the child, provided such  
82 access is in the best interests of the child; (2) ensure disclosure of  
83 information; (3) grant other rights and duties set forth in this section;  
84 and (4) provide other appropriate relief. Any initial pleading filed to  
85 establish parental rights and responsibilities or parent-child contact  
86 with a child of a deploying parent shall be so identified at the time of  
87 filing by stating in the text of the pleading the specific facts related to  
88 deployment or mobilization.

89 (g) Nothing in this section shall preclude the court from hearing a  
90 motion at least ninety days after the return of the deploying parent for  
91 permanent modification of final orders of custody and visitation  
92 issued pursuant to section 46b-56, 46b-56a or 46b-61 of the general  
93 statutes. The nondeploying parent shall bear the burden of showing  
94 that reentry of final orders of custody or visitation, issued pursuant to  
95 section 46b-56, 46b-56a or 46b-61 of the general statutes, in effect before  
96 the deployment or mobilization is no longer in the best interests of the  
97 child. The absence of a deploying parent due to deployment or  
98 mobilization shall not be the sole basis for modifying such orders.

99 Sec. 2. Section 52-146k of the general statutes is repealed and the  
100 following is substituted in lieu thereof (*Effective from passage*):

101 (a) As used in this section:

102 (1) "Battered women's center" means any office, shelter, host home  
103 or center offering assistance to battered women through crisis  
104 intervention, emergency shelter referral and medical and legal  
105 advocacy, and which meets the Department of Social Services criteria  
106 of service provision for such centers.

107 (2) "Battered women's counselor" means any person engaged in a  
108 battered women's center (A) who has undergone a minimum of twenty  
109 hours of training which shall include, but not be limited to, the

110 dynamics of battering, crisis intervention, communication skills,  
111 working with diverse populations, an overview of the state criminal  
112 justice system and information about state and community resources  
113 for battered women, (B) who is certified as a counselor by the battered  
114 women's center which provided such training, (C) who is under the  
115 control of a direct service supervisor of a battered women's center, and  
116 (D) whose primary purpose is the rendering of advice, counsel and  
117 assistance to, and the advocacy of the cause of, battered women.

118 (3) "Confidential communication" means information transmitted  
119 between a victim of a battering or a sexual assault and a battered  
120 women's counselor or sexual assault counselor in the course of that  
121 relationship and in confidence by a means which, so far as the victim is  
122 aware, does not disclose the information to a third person other than  
123 any person who is present to further the interests of the victim in the  
124 consultation or any person to whom disclosure is reasonably necessary  
125 for the transmission of the information or for the accomplishment of  
126 the purposes for which such counselor is consulted, and includes all  
127 information received by, and any advice, report or working paper  
128 given or made by, such counselor in the course of the relationship with  
129 the victim.

130 (4) "Rape crisis center" means any office, institution or center  
131 offering assistance to victims of sexual assault and their families  
132 through crisis intervention, medical and legal advocacy and follow-up  
133 counseling and which meets the Department of Public Health criteria  
134 of service provision for such centers.

135 (5) "Sexual assault counselor" means (A) any person engaged in a  
136 rape crisis center who [(A)] (i) has undergone a minimum of twenty  
137 hours of training which shall include, but not be limited to, the  
138 dynamics of sexual assault and incest, crisis intervention,  
139 communication skills, working with diverse populations, an overview  
140 of the state criminal justice system, information about hospital and  
141 medical systems and information about state and community  
142 resources for sexual assault victims, [(B)] (ii) is certified as a counselor

143 by the sexual assault center which has provided such training, [(C)]  
144 (iii) is under the control of a direct services supervisor of a rape crisis  
145 center, and [(D)] (iv) whose primary purpose is the rendering of  
146 advice, counseling and assistance to, and the advocacy of the cause of,  
147 victims of sexual assault, or (B) any member of the armed forces of the  
148 state or the United States who is trained and certified as a victim  
149 advocate or a sexual assault prevention coordinator in accordance with  
150 the military's sexual assault prevention and response program.

151 (6) "Victim" means any person who consults a battered women's  
152 counselor or a sexual assault counselor for the purpose of securing  
153 advice, counseling or assistance concerning a mental, physical or  
154 emotional condition caused by a battering or a sexual assault.

155 (b) On or after October 1, 1983, a battered women's counselor or a  
156 sexual assault counselor shall not disclose any confidential  
157 communications made to such counselor at any time by a victim in any  
158 civil or criminal case or proceeding or in any legislative or  
159 administrative proceeding unless the victim making the confidential  
160 communications waives the privilege, provided under no  
161 circumstances shall the location of the battered women's center or rape  
162 crisis center or the identity of the battered women's counselor or sexual  
163 assault counselor be disclosed in any civil or criminal proceeding. Any  
164 request made on or after October 1, 1983, by the defendant or the state  
165 for such confidential communications shall be subject to the provisions  
166 of this subsection.

167 (c) When a victim is deceased or has been adjudged incompetent by  
168 a court of competent jurisdiction, the guardian of the victim or the  
169 executor or administrator of the estate of the victim may waive the  
170 privilege established by this section.

171 (d) A minor may knowingly waive the privilege established by this  
172 section. In any instance where the minor is, in the opinion of the court,  
173 incapable of knowingly waiving the privilege, the parent or guardian  
174 of the minor may waive the privilege on behalf of the minor, provided

175 such parent or guardian is not the defendant and does not have a  
176 relationship with the defendant such that he has an interest in the  
177 outcome of the proceeding.

178 (e) The privilege established by this section shall not apply: (1) In  
179 matters of proof concerning chain of custody of evidence; (2) in  
180 matters of proof concerning the physical appearance of the victim at  
181 the time of the injury; or (3) where the battered women's counselor or  
182 sexual assault counselor has knowledge that the victim has given  
183 perjured testimony and the defendant or the state has made an offer of  
184 proof that perjury may have been committed.

185 (f) The failure of any party to testify as a witness pursuant to the  
186 provisions of this section shall not result in an inference unfavorable to  
187 the state's cause or to the cause of the defendant.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2012</i>	New section
Sec. 2	<i>from passage</i>	52-146k

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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### ***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

### ***Explanation***

The bill does not result in a fiscal impact as it modifies child custody orders and expanded certain statutory definitions.

House "A" struck the language of the underlying bill and resulted in the fiscal impact described above.

House "B" expanded the definition of a "sexual assault counselor" to include certain trained and certified members of the state and federal armed forces and does not result in a fiscal impact.

### ***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None



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**OLR Bill Analysis****sHB 5395 (as amended by House "A" and "B")\******AN ACT CONCERNING CUSTODY ORDERS FOR DEPLOYED MEMBERS OF THE ARMED FORCES.*****SUMMARY:**

This bill prohibits a court from entering a final custody or visitation order modifying a final custody or visitation order until 90 days after a deploying parent's deployment or mobilization ends, unless he or she agrees to a modification.

The bill specifies that it does not stop the court from hearing a motion at least 90 days after a deploying parent returns for permanent modification of final orders of custody and visitation. The nondeploying parent bears the burden of showing that re-entry of final order of custody or visitation that was in effect before the deployment is no longer in the child's best interest.

It also sets the requirements for temporary modification of orders because of a deployment or mobilization.

The bill adds armed forces members who have been trained and certified as victim advocates or sexual assault prevention coordinators under the military's sexual assault prevention and response program to the definition of "sexual assault counselor" for purposes of laws requiring:

1. communications between victim and counselor to generally be considered confidential and
2. mandated reporting for individuals who, in the ordinary course of their employment or profession, have reasonable cause to

suspect or believe that any child under age 18 has been abused or neglected or that an intellectually disabled person has (CGS §§ 17a-101 and 46a-11b).

In expanding the definition, it also allows such trained armed forces members to act as professional counselors without a license (CGS § 20-195bb).

\*House Amendment "A" (1) eliminates provisions requiring a transition plan for modifications and on a court hearing an emergency motion to modify final orders and (2) makes other minor and technical changes.

\*House Amendment "B" adds armed forces members with certain training to the definition of sexual assault counselor for the purposes of victim and counselor confidentiality.

EFFECTIVE DATE: July 1, 2012, except the provision expanding the definition of sexual assault counselor is effective upon passage.

## **PROHIBITION ON FINAL ORDER MODIFICATION**

When a deploying parent must be separated from his or her child during a deployment or mobilization, the bill prohibits a court from entering a final order of custody or visitation modifying a final order of custody or visitation until 90 days after the deployment or mobilization ends, unless the deploying parent agrees to the modification. It applies to final orders of custody or visitation related to custody, joint custody, or orders when parents live separately.

The bill defines a "deploying parent" as an armed forces member notified by military leadership that he or she will be deployed or mobilized with the armed forces. "Nondeploying parent" means a parent who has not been so notified.

It defines:

1. "deploy" as military service in compliance with military orders

that an armed forces member receives to report for combat operations, contingency operations, peacekeeping operations, a remote tour of duty, or other active duty service, including a period during which the member remains subject to deployment orders and deployed on account of sickness, wounds, or other lawful cause;

2. “mobilize” as the call-up of National Guard or Reserve service members to extended active duty, but, “mobilization” does not include National Guard or Reserve annual training, inactive duty days, drill weekends, temporary duty or state active duty; and
3. “armed forces” as the U.S. Army, Navy, Marine Corps, Coast Guard, Air Force, their reserve components, and the state’s National Guard under federal service.

### ***Post-Deployment or -Mobilization***

The bill specifies that it does not stop the court from hearing a motion for permanent modification of final orders of custody and visitation at least 90 days after a deploying parent returns. The nondeploying parent bears the burden of showing that reentry of final order of custody or visitation that was in effect before the deployment is no longer in the child’s best interest. The bill further specifies that absence due to deployment or mobilization cannot be the sole basis for modifying orders.

## **TEMPORARY MODIFICATION ORDERS**

### ***Modification Request***

Under the bill, when an armed forces member receives notice of deployment or mobilization requiring separation from his or her child for whom he or she has sole or joint custody or court ordered visitation, parental access, or parenting time, the member or the nondeploying parent may ask the court to modify any existing custody or visitation order. And the court may enter a temporary order of custody or visitation modifying a final order of custody or visitation

for the period of deployment or mobilization when certain conditions are met.

First, the court must find that the deployment or mobilization would have a material effect upon the deploying parent's ability to exercise parental rights, responsibilities, or parent-child contact as set in the existing final orders of custody or visitation. Second, it must find modification is in the child's best interests.

The bill (1) specifies that when issuing temporary modification orders in this situation, existing custody and visitation law must guide the court, and (2) requires the court to hear motions for temporary modification of final orders of custody or visitation due to deployment as quickly as possible and give them priority.

### ***Modification Requirements***

A temporary court order modifying final orders of custody or visitation must specify that deployment or mobilization is the basis for the order, and the court must enter it as a temporary order. The order must also require the nondeploying parent to provide the court and the deploying parent with 30 days' advance written notice of any change of address and telephone number, unless a court has ordered that the deploying party is not entitled to this information.

Under the bill, temporary modification orders issued under the bill must designate the parent's (1) parental rights; (2) responsibilities; and (3) parent-child contact during a period of leave granted to the deploying parent, in the best interests of the child.

The bill specifies that changes in actual leave dates cannot be used by the nondeploying parent to limit parent-child contact.

A temporary court order modifying final orders of custody or visitation issued under the bill must require that the:

1. nondeploying parent make the child available to the deploying parent, to the extent he or she requests it, when the deploying

parent has leave, provided (a) the request for visitation is not inconsistent with the final orders of custody or visitation being modified by the temporary court order and (b) the child cannot be absent from school unless the court orders it and both parents agree in writing;

2. nondeploying parent facilitate opportunities for telephone, electronic mail, and other contact between the deploying parent and the child during deployment or mobilization; and
3. deploying parent provide timely information about his or her leave schedule to the nondeploying parent.

### **PENDING AND NONEXISTENT ORDERS**

If pendente lite orders of custody or visitation are in place (i.e., orders while litigation is pending) or if there are no existing orders of custody or visitation establishing the terms of parental rights and responsibilities or parent-child contact and it appears that deployment or mobilization is imminent, then on either parent's motion the court must expedite a hearing to establish temporary parental rights and responsibilities and parent-child contact. This is to (1) ensure the deploying parent has access to the child, provided it is in the child's best interest; (2) ensure disclosure of information; (3) grant other rights and duties; and (4) provide other appropriate relief.

Any initial pleading filed to establish parental rights and responsibilities or parent-child contact with a child of a deploying parent must be identified at the time of filing by stating in the text of the pleading the specific facts related to deployment.

### **COMMITTEE ACTION**

Select Committee on Veterans' Affairs

Joint Favorable Substitute Change of Reference  
Yea 10 Nay 0 (03/13/2012)

Judiciary Committee

Joint Favorable

Yea     45     Nay   0     (04/02/2012)